

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CRIMINAL APPLICATION NO. 37 OF 2012

SHANITA NAMUYIMBWA:.....:APPLICANT

VS

UGANDA:.....:RESPONDENT

CORAM: Hon. Justice M. S. Arach Amoko, JA

RULING

This is a second application by the applicant for release on bail pending appeal. The first application was Cr. Application No. 35 of 2012. I dismissed it due to lack of sufficient medical evidence in support of her alleged grave illness.

The main ground of appeal is still the serious complications that require removal/replacement of breast implants which were purportedly inserted in her breast at some hospital in Dubai in 2009; which surgery cannot be performed locally in Uganda.

This time the applicant averred that the medical facilities in Luzira are incapable of addressing her peculiar ailment which requires specialised treatment outside the
prison precincts

That she is likely to suffer breast cancer, implant leakage/rapture or hardening of the breasts if she is not released on bail.

I was not satisfied with the report by Dr. Andama Joseph, the Medical Superintendent of Murchison Bay Hospital dated 24/10/2012 CO where he was informing the commissioner General of Prisons that the applicant

"I was referred to Mulago National Referral Hospital for consultation on the 18/10/2012 for opinion and way forward for the management of her illness by the breast specialist.

She was diagnosed to have the painful swelling of the breasts due to implant discordant and rejection of silicon implant by the breast tissue.

It was recommended the implant be surgical removed by the specialist''(sic)

Upon perusal of the said letter I found that it was not only vague but it also amounted to hearsay evidence, in the absence of a report from the breast specialist who had allegedly examined the applicant. Consequently, I stood over the matter till 4 pm and summoned Dr. Andama to produce

the report which the applicant had informed court was in Dr. Andama's possession.

The main purpose of the exercise was for Court to be availed evidence to assist it in determining whether the applicant's illness is really as grave as she alleged and if so, whether it is incapable of adequate medical treatment while the applicant is in custody.

Dr. Andama testified at 4 pm. He confirmed his earlier report that he had examined the applicant upon instructions from the commissioner General of Prisons and found scars below her breasts as well as two slippery things inside her breasts. Upon squeezing the nipples, there was white milk like fluid with a tint of blood. He then referred her to the Mulago breast clinic for further examination and opinion. She was examined and the report from Mulago says that the implant was discordant and the silicon implant was rejected. That it can be removed by surgery. The report did not however, mention that the surgery could be carried out in Uganda. The report was tendered in court as exhibit P1 and counsel for the respondent had an opportunity to cross-examine Dr. Andama.

I have carefully perused the report from Mulago Hospital dated 18/10/12. It confirms the diagnosis by Dr. Andama and

recommends that the **"implants to be removed by open surgery"**.

Although it does not state that it can be done in Mulago, for the purposes of this application, I am satisfied that the applicant's conditions amounts to grave illness. I did consider the rest of the conditions in the previous application in detail. My findings and conclusions thereon remain the same. I need not repeat them here.

in the premises, I grant this application on the following terms and conditions:

- 1) The applicant shall be released on bail pending determination of her appeal or any further orders from this court.**
- 2) The applicant shall deposit a further sum of Shs. 100 million (One hundred million shillings) in cash prior to her release.**
- 3) The applicant shall report to the Registrar of this Court every 2 weeks (two weeks) for extension of her bail beginning from 30th November 2012.**
- 4) (i) Mr. Nkolo Asuman**
(ii) Mr. Kawuma Felix Mutagombya
(iii) Mrs Mastula Jjombwe

(iv) Ms. Halima Namakula, shall be the applicants sureties and shall secure the attendance of the applicant in court whenever required to do so.

5 5) The sureties shall execute a bail bond of Shs. 10 million (ten million shillings) each (not cash):

Dated at Kampala this..... 15th day of November..... 2012.

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M. S. ARACH AMOKO
JUSTICE OF APPEAL

